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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Delivered on May 31, 2007

\+ CRL.M.C. 6255/2005

MANISH BAJAJ ..... Petitioner
Through Mr. Sunil Mehta, Advocate

versus

THE STATE ..... Respondent
Through Mr. Pawan Sharma, APP for State
Mr. Quyam-ud-din for respondent No.2

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat (Open Court)

1. The petitioner seeks intervention of this Court under Section 482 Code of Criminal Procedure in respect of an order of the Learned Additional Sessions Judge dated 25.11.05 whereby he cancelled the bail granted to the petitioner.

2. The facts necessary for the decision in these proceedings are that the petitioner got married to the second respondent on 31.01.01. A child was born out of the wedlock. The complainant/ second respondent lodged a First Information Report (FIR) on 8th July, 2004 in the police station, Paschim Vihar alleging commission of offences under Section 498A/ 406/323/341/506/34 IPC.

3. The petitioner and his father was arrested on 10th July, 2004. His father was released after three days on regular bail by the Learned Additional Metropolitan Magistrate on 13.07.04. The petitioner's application for regular bail was listed on 21.07.04. On that date, his father and the second respondent/ complainant apparently entered into a compromise. The petitioner's father held himself out as his power of attorney. In terms of the compromise, it was agreed, *inter alia*, that the petitioner and the complainant would move for mutual consent divorce and also that the complainant/wife would be entitled to Rs. 16.5 lakhs in full and final settlement.

4. The Court considered the bail application as well as the submissions on behalf of the parties including the joint statement that compromise had been arrived at. The applicant's bail order was allowed in the following terms.

> *" 21.01.2004*
>
> *Present: Sh. M.S. Vinayak adv. for applicant*
> *APP for State with IO*
> *Complainant with Sh. M. Qamuddin*
>
> *Both sides submit that parties have amicably settled. Photo copy of the settlement deed has also been placed on record today. In view of the settlement between the application and the complainant aside, there is no opposition for allowing this application. Hence, this bail application is allowed and applicant is ordered to be released on bail on furnishing a personal bond in the sum of Rs. 15,000/- with one surety of the like amount to the satisfaction of the concerned trial Court. Copy of the order be given dasti to the parties as prayed."*

It is not disputed that subsequent to the above order, the petitioner was released from judicial custody, in terms of the order. The sum of Rs. 5 lakh was paid on 21st July, 2004, on that date itself, to the respondent-wife.

5. The complainant/wife through her counsel sought to effectuate the settlement on 4th August, 2004. A notice was sent to the petitioner to cooperate in the signing of the joint petition for mutual consent divorce under Section 13B of the Hindu Marriage Act. Apparently, this did not meet with any success. Therefore, the complainant applied to the Court on 14.09.04 for cancellation of bail granted earlier.

6. In the application under Section 439 (2) Cr.P.C., the contention sought to be raised by the petitioner, *inter alia*, was that the time for effecting the compromise had not matured, in the sense, that one year period stipulated under Section 13 B of HMA had not elapsed. This is apparent from the following extract of the order of the trial Court dated 17.01.05:

> *"The accused persons have denied in their reply that they have obtained the bail fraudulently or that they are not interested in honouring the Compromise Deed and even in reply to the complainant's legal notice Arjun Dev and Madhu Bajaj, the executants of the Compromise Deed had stated that they were always ready to honour the compromise by persuading their son to file divorce petition which in any case could be filed only after expiry of one years period of separation between husband, wife which was to start from 03.07.04. It has also been stated in the reply that the compromise Deed has been executed between the complainant and her father in law and mother in law only while her husband was in judicial custody and so he is not a party to that compromise deed.*
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> *As far as the plea taken by accused Manish Bajaj, the husband of the complainant, that the compromise deed is signed by his parents only and he himself is not a party to that is concerned I am of the view that, that plea is not acceptable because even though he is not a signatory to that Deed and he was in jail but when his bail application came up for consideration before this Court on 21.07.04 it had been stated by his counsel also that parties had compromise and as noted already a copy of the compromise deed was also placed on record. So, even if the husband himself had not signed the*

compromise Deed which, as noted already is signed by his father acting as his attorney he has to be considered as a part to that compromise."

7. The trial Court apparently accepted the position of the present petitioner that even though he was not the signatory of the deed, it was not his intention to resile from the commitment and the petition for divorce could not have been filed before the the expiry of the one year mandatory separation period between the husband and the wife. On this ground, the Court felt that it need not go into the question at that stage as to whether the accused, i.e. the present petitioner had obtained the bail by playing a fraud upon it. The Court, therefore, rejected the application. The operative part of the Court's order dated 17.01.05 is as follows:

> "*As far as the request of the complainant for cancelling the bail of the accused persons on the ground of non-fulfillment of the terms of compromise as noted above, is concerned I am of the view that since it has been stated on behalf of the accused persons that they never had any intention of not honouring their commitment and that the petition for divorce cannot be filed before the expiry of one year of separation between the husband and wife and which position in law was not seriously disputed from the side of complainant also I need not go into the question at this stage as to whether the accused persons can be said to have obtained the bail by playing fraud upon the Court and also whether this court can cancel the bail or not on the ground of non-fulfillment of the terms of the compromise Deed and all these points can be considered if at all in future the accused persons refused to honour the compromise Deed.*
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> *So, at this stage I dismiss the application of the complainant for cancellation of bail."*

8. The complainant/wife thereafter moved the Matrimonial Court under Section 151 C.P.C. seeking to compel the petitioner to cooperate and sign the joint petition to effectuate the compromise and have the dissolution effected.

However, the petitioner declined to do so. Therefore, another application under Section 439 (2) was moved. This was eventually allowed by the Court on 25.11.05 by the impugned order.

9. The material portion of the impugned order reads as follows:

> *"Perusal of the above orders shows that the Ld. Court granted bail for the reason that the parties had agreed to part their ways peacefully. Perusal of the record shows that one counsel had represented all the respondents i.e. respondent Manish Bajaj, his father, Arjun Dev Bajaj, mother Madhu Bajaj and his sister Vinita Rawal. Settlement deed is also signed by Arjun Dev Bajaj as the attorney of Manish Bajaj. It also bears the signatures of two witnesses. Parents of Manish Bajaj named Arjun Dev Bajaj and Madhu Bajaj have also separately signed the agreement as second party. With the aforesaid submission whether respondent Manish Bajaj wants this Court to proceed against his father Arjun Dev Bajaj for falsely representing as his attorney? Had he not appointed his counsel as attorney in whose favour he signed vakaltnama and who he represented him in the Court? Whether the conduct of the respondent Manish Bajaj does not amount to contempt of Court? The answer to the aforesaid questions is in the positive. Respondent Manish Bajaj cannot be allowed to wriggle out of the compromise on a false and too technical a ground when for the purpose of grant of bail to himself and his family members, he agreed to the settlement deed. In the circumstances,he has no right to remain enlarged on bail. Present application for bail is hence allowed. Bail granted to the respondent Manish Bajaj is cancelled."*

10. Learned counsel for the petitioner urged that the impugned order is unsustainable because the Court virtually sat in review and exercised its power to cancel the bail after earlier declining to do so on 17.01.05. It was contended that the jurisdiction of the Court, to cancel bail has to be exercised with care and great circumspection. Learned counsel relied upon the decision of the Supreme Court reported as *Gurcharan Singh & Ors. -v-Delhi Administration* 1978 Crl.L.J. 129.

He submitted that the learned Judge who proceed and issued the impugned order acted improperly. In this case, he relied upon *Vikramjit Singh -v- State of Madhya Pradesh* 1992 Crl.L.J. 516. It was contended that the learned Judge who earlier had the occasion to deal with the application under Section 439 (2) was available when a similar request was made and propriety demanded that the second application ought to have been referred to the previous Judge. This course not having been taken, the impugned ordered suffered from an error of law. Learned counsel also relied upon the judgment of the Supreme Court reported as *Harjeet Singh -v- State of Punjab* 2002 Crl.L.J 571 in support of the proposition that the application to cancel the bail granted earlier by recourse to power under Section 439 (2) should be in extremely rare circumstances.

11. Counsel next contended that the approach of the trial Court was untenable and illegal. It was contended that the Court cannot use its power under Section 439 (2) to give effect to a prior compromise, particularly, where one party by his conduct denies it or is unable to comply with its terms. In this case, he relied upon the judgment reported as *Avinash Arora & Ors. -v- U.T. of Chandigarh & Anr.* 2000 Crl.L.J. 4674. Reliance was also placed upon the judgment reported as *Biman Chatterjee -v- Sanchita Chatterjee & Anr.* AIR 2004 SC 1699 to the effect that the grant of bail in the Criminal Procedure Code is governed by appropriate provisions which do not contemplate either grant or refusal on the basis of assurance of a compromise. Therefore, the course adopted by the Court to cancel the bail for violation of the condition of the compromise is impermissible and cannot be upheld.

12. Learned counsel for the respondent resisted the petition and contended that a close reading of the various orders of the Court, namely, the final order granting bail on 21.07.04, the subsequent order dated 17.01.05 and the impugned order dated 25.11.05 bring about the reprehensible conduct of the petitioner. It was contended by learned APP for State, Shri Pawan Sharma that though the petitioner was not a party to the compromise which was executed on 22.07.04, the fact that it was given effect to was never denied. In furtherance of that compromise, the sum of Rs. 5 lakh was paid to the complainant and so recorded by the parties and noticed by the Court. Additionally in furtherance to the compromise/agreement, the petitioner enjoyed the benefit of the bail order and was set at liberty. Later when it was felt that he was seeking to resile from the compromise, the complainant/ respondent approached the Court for cancellation of bail. If there was no doubt as to the binding nature of the agreement, that was clarified in the course of the second proceeding, that is application under Section 439 (2) when the petitioner unequivocally held out that he would comply with the compromise and cooperate, once the mandatory one year period elapsed. Even this did not happen, which compelled the complainant to approach the Court yet again with Section 439 (2) application.

13. Counsel submitted that the facts of this case show that the petitioner used the judicial process to secure liberty, and when at the first instance was put to notice, as to whether he wanted to comply with the terms, on which bail was granted, he held out that the terms would be complied with. However, later he resiled from it. In these circumstances, it was contended that the Court, through

the impugned order, exercised its discretion in a judicious and proper manner.

14. The above narrative shows that there is not much dispute about the facts. The petitioner and his father were detained on 10th April, 2004. The father was released on bail on 13th April, 2004 .The petitioner continued to remain in custody in the meanwhile. His father, being armed with a power of attorney on his behalf, entered into a compromise on his behalf with the complainant/ wife on 21.07.04 with the end of securing his release. Pursuant to the compromise (which was noted in the order of 21st July, 2004) a sum of Rs. 5 lakhs was handed over to the complainant. The petitioner was released from judicial custody.

15. The order of 21st July, 2004 shows no discussion on the merits. This, to a great extent, leads credence to the arguments by the respondent that the bail application went unopposed on the ground of the compromise. The petitioner got bail and continued to be at liberty. When the time came to effectuate the settlement, he took the position that one year period had not elapsed. This position was reiterated in the first cancellation of bail proceeding. Indeed that formed the basis for the Court to reject that application by holding that the application was pre-mature and that the Court was not deciding the matter on the merits since the one year period had not elapsed.

16. It was contended on behalf of the petitioner that if the complainant had any grievance about dismissal of her application on 17.01.05, she should have carried the matter to its logical conclusion and approached this Court in revision. I do not agree with that logic. A litigant is expected to fall in line with the Court's order. The approach of the Court while declining the cancellation of bail

application through its order dated 17.01.05 was in consonance with reason and logic. The Court felt, and perhaps justly, that since the decision taken by the present petitioner that the one year period should expire in accord with law, it was pre-mature to judge whether he would or would not comply with the terms embodied in the bail order. Therefore, it declined to go into the merits of the cancellation of bail application.

17. The complainant has to be viewed from the point of view of a beleaguered litigant who is expected to take reasonable positions. The view taken by the trial Court on 17.01.05 cannot be held to be unjustified. Therefore, her adherence to the view as it were of the trial Court can neither be called unreasonable nor held to be dis-entitling her to move the second application under Section 439 (2).

18. The main argument as far as the legality of the impugned order is concerned, was on the ground that learned Judge did not exercise his discretion judiciously. That apart, the other serious objection has been that the Court should not try and give effect to compromise embodied as terms of bail order. However, the judgments have to be viewed in the context of the facts presented before the Court. There can be no quarrel with the proposition that the consideration which weigh with the Court in deciding applications under Section 439 (2) are slightly different from those that have to be viewed in the context of a regular bail application. Yet, what is of importance is that representations held out, by and on behalf of the petitioner, particularly, in the course of regular bail application inhibited the parties that is respondent as well as the prosecution from opposing the bail. Therefore, projecting a compromise as a ground of bail,

has to necessarily be seen from a different perspective. The two judgments cited, in my considered opinion, were rendered in the context of entirely different circumstances. In *Avinash Arora*'s case, the Supreme Court was confronted with the circumstance where the facts spoke for themselves. The accused was directed to deposit a sum of Rs. 10 lakhs which was considered far too onerous. In the subsequent judgment, namely, *Biman Chatterjee*'s case, there was some dispute as to whether there was any compromise at all. In this case, such a doubt does not exist; if there did exist any doubt, two circumstances virtually obliterated it. One, the petitioner himself agreed to abide by the terms when he resisted the first cancellation application, which is recorded in the order dated 17.01.05; two, the sum of Rs. 5 lakh was indeed paid and consequently he was released from judicial custody.

19. The power under Section 482 has an inherent power. It can undoubtedly be invoked in a wide variety of circumstances. Its ambit is wide, and the reach of the Court, in exercise of jurisdiction, limited only to the extent of express provisions, or implied limitations. Yet, one overwhelming consideration has to inform exercise of the power, wherever, the Court chooses to do so, i.e. to secure the ends of justice. The facts of this case have pointed to the petitioner using the judicial process, to secure bail, on the strength of representation about a compromise. The complainant and the prosecution did not contest the application for bail, on that basis. The petitioner enjoyed the order, and was released. Further as per the compromise, Rs. 5 lakhs were paid to the complainant. When the first application under Section 439 (2) was moved, the

petitioner expressed his willingness to adhere to the terms of the agreement, but according to the provision of Section 13B, Hindu Marriage Act. When the period, according to that provision expired, he resiled, and refused to honour his word. He now seeks intervention under Section 482 Cr.P.C. after the the Court cancelled his bail. These facts shown that the petitioner has no regard to the orders of Court, and commitments made to it. He used the judicial process, secured bail, on pretences, made a show of compliance with conditions, and when faced with consequences of his conscious and deliberate actions, seeks intervention of this Court. Exercise of inherent power, in the facts of this case, can never aid the interests of justice - it would thwart and subvert ends of justice.

20. For these reasons, the petition must fail. It is accordingly dismissed.

S.RAVINDRA BHAT, J

MAY 31, 2007
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